

## § 806.21

compact and are based upon, but not limited to, the goals, objectives, guidelines and criteria of the comprehensive plan.

### § 806.21 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The Commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

(c) *Disapprovals—other governmental jurisdictions.* (1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated docket by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

(2) The Commission may modify, suspend or revoke a previously granted approval if the project sponsor fails to obtain or maintain the approval of a member jurisdiction or political subdivision thereof having lawful jurisdiction over the project.

## 18 CFR Ch. VIII (4–1–10 Edition)

### § 806.22 Standards for consumptive uses of water.

(a) The project sponsors of all consumptive water uses subject to review and approval under § 806.4, § 806.5 or § 806.6 of this part shall comply with this section.

(b) *Mitigation.* All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, § 806.5 or § 806.6 of this part shall mitigate such consumptive use. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Mitigation may be provided by one, or a combination of the following:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's total consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(ii) Release water for flow augmentation, in an amount equal to the project's total consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(iii) Discontinue the project's consumptive use, except that reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such

project shall provide mitigation in accordance with paragraph (3), below, for the calendar year in which such failure occurs, and the Commission will re-evaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for annual consumptive use, in an amount and manner prescribed by the Commission.

(4) Implement other alternatives approved by the Commission.

(c) *Determination of manner of mitigation.* The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in §806.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) *Quality of water released for mitigation.* The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in §806.2, as applicable.

(e) *Approval by rule for consumptive uses.* (1) Except with respect to projects involving natural gas well development subject to the provision of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule:

(i) Notification of Intent: No fewer than 90 days prior to construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application

fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of its intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) Metering, daily use monitoring and quarterly reporting. The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in §806.30.

(3) Standard conditions. The standard conditions set forth in §806.21 above shall apply to projects approved by rule.

(4) Mitigation. The project sponsor shall comply with mitigation in accordance with §806.22 (b)(2) or (b)(3).

(5) Compliance with other laws. The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(6) The Executive Director will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(7) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) Approval by rule for consumptive use related to natural gas well development.

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(1) Any project involving the development of natural gas wells subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(2) Notification of Intent: Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 10 days after submittal of a NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15 and send a copy of the NOI to the appropriate agencies of the member state.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water and fluids, including additives, flowback and brines, utilized by the project.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback fluids or produced brines utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state, or local government agencies having jurisdiction over the project. The Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and produced fluids, including brines, have been treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant or deny or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any such approval shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a).

(10) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire five years from the date of such notification, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any water source approved for use by the project sponsor for natural gas well development pursuant to § 806.4 or this section, at the applicable drilling pad site subject to any approval or authorization required by the member state to utilize such source(s).

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to paragraph (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member state. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s).

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(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s). The notice requirements related to agencies of member states, municipalities and counties contained in paragraph (f)(2) of this section, and the notice requirements contained in paragraph (f)(3) of this section, shall likewise be applicable to any request submitted hereunder.

[71 FR 78579, Dec. 29, 2006, as amended at 73 FR 78620, Dec. 23, 2008; 74 FR 49812, Sept. 29, 2009]

### § 806.23 Standards for water withdrawals.

(a) The project sponsors of all withdrawals subject to review and approval under § 806.4, § 806.5 or § 806.6 of this part shall comply with the following standards, in addition to those required pursuant to § 806.21.

(b) *Limitations on withdrawals.* (1) The Commission may limit withdrawals to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor.

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; or affecting low

flow of perennial or intermittent streams.

(3) The Commission may impose limitations or conditions to mitigate impacts, including without limitation:

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown.

(ii) Require the project sponsor to provide, at its own expense, an alternate water supply or other mitigating measures.

(iii) Require the project sponsor to implement and properly maintain special monitoring measures.

(iv) Require the project sponsor to implement and properly maintain stream flow protection measures.

(v) Require the project sponsor to develop and implement an operations plan acceptable to the Commission.

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, and support existing and proposed future withdrawals.

### § 806.24 Standards for diversions.

(a) The project sponsors of all diversions subject to review and approval under § 806.4, § 806.5 or § 806.6 of this part shall comply with the following standards.

(b) For projects involving out-of-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Demonstrate that they have made good faith efforts to develop and conserve sources of water within the importing basin, and have considered other reasonable alternatives to the diversion.

(ii) Comply with the general standards set forth in §§ 801.3, 806.21, and 806.22, and the applicable requirements of this part relating to consumptive uses and withdrawals.